



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

CRS
Docket No: 1736-00
21 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an officer of the Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the offense of assault from all references to the 30 October 1998 nonjudicial punishment.

2. The Board, consisting of Messrs. Pfeiffer, Silberman, and Neuschafer, reviewed Petitioner's allegations of error and injustice on 25 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was commissioned as an ensign on 28 May 1980 and through the years has reached the rank of commander.

d. On 30 October 1998 Petitioner received nonjudicial punishment for being drunk on duty, assaulting a female Sailor by kissing her on or near her face and mouth, and conduct unbecoming an officer in violation of Articles 112, 128 and 133, respectively. The record contains the charge sheet, which sets forth the charges of violating Articles 112, 128 and 133, and the specifications thereunder. The punishment imposed consisted of a

letter of reprimand issued on the same date.

e. Also on 30 October 1998 Commander, Destroyer Squadron TWO FOUR sent a letter to the Chief of Naval Personnel. Paragraph 2 of this letter mentions "Article 128: Assault".

f. Petitioner's fitness report for the period 1 September to 1 December 1998 mentions within the body of the report "Article 128: Assault".

g. On 29 June 1999 a board of inquiry found that he had not committed assault and voted not to separate from the Navy for cause.

h. On 20 January 2000 the President of the Naval War College set aside the wording in Petitioner's letter of reprimand that pertained to the assault charge. Accordingly, the Navy Personnel Command has made the necessary corrections to that letter.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Since it is clear that the President of the War College intended to set aside that part of the nonjudicial punishment pertaining to assault, all remaining references to that offense should be removed from the documentation in the record. Specifically, the words "Assault by kissing GM3(S) on or near her face and mouth" should be removed from the charge sheet, along with the language referencing that act set forth in the specifications of the charge under Article 133. Also, the 30 October 1998 letter from Commander, Destroyer Squadron TWO FOUR should be modified by removing "Article 128: Assault" from paragraph 2. Concerning Petitioner's fitness report for the period 1 September to 1 December 1998, the "Article 128: Assault" should be removed from the body of the report.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing from the Charge Sheet, Charge II and the specification of that charge and, from paragraph D of Charge III, the words "and by unlawfully kissing GM3(S) on or near her face and mouth."

b. That the record be further corrected by removing the words "Article 128, Assault" from the fitness report for the period 1 September to 1 December 1998.

c. That the record be further corrected by deleting from

Commander, Destroyer Squadron TWO FOUR's letter of 30 October 1998, the words "Article 128, Assault;".

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

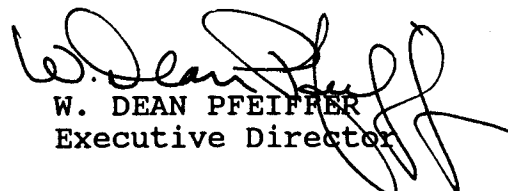
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director